

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MAURICE CLAY,

Petitioner,

v.

Case No. 11-13868

DAVID BERGH,

Respondent.

ORDER DENYING PETITIONER'S MOTION TO APPOINT COUNSEL

Maurice Clay was convicted in a Michigan court of raping at knife-point a college student, in her car, the night of December 27, 1989. He exhausted his appeals in state court, he petitioned in federal court for a writ of *habeas corpus*, and he now moves for an appointment of counsel to assist with his petition.

Clay says he needs counsel primarily because of the "complex nature of [this] litigation." (Dkt. # 13 at 1.) It is hard to see the complexity. DNA from a semen sample attached Clay to the victim. Clay claimed that he and the victim had a consensual affair the night before the victim was assaulted, but the victim denied the claim, and the jury had several good reasons to believe her rather than Clay.

Clay says he needs help "obtaining undisclosed records," (Dkt. # 13 at 1), but he provides no good reason to believe the State has withheld something. He says additional "depositions from [police] officers and [the] prosecution's office" "may be required," (*id.* at 2), but that is unlikely. See 28 U.S.C. § 2254(d)(1), (e)(2); *Cullen v. Pinholster*, 131 S.Ct. 1388, 1401 (2011). He says a different expert would conclude the

semen was from the night before the assault, but that is pure, and dubious, speculation. See *People v. Clay*, 2008 WL 4148972, *4 (Mich. Ct. App. 2008).

The petition appears, at present, to include no exceptional element warranting an appointment of counsel. See 18 U.S.C. § 3006A(a)(2)(B); *Lemeshko v. Wrona*, 325 F.Supp.2d 778, 787-88 (E.D. Mich. 2004). Accordingly,

IT IS ORDERED that the motion to appoint counsel [Dkt. # 13] is DENIED.

Counsel will be appointed by the court, acting on its own, if further review reveals that an appointment is required.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: July 5, 2013

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, July 5, 2013, by electronic and/or ordinary mail.

s/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522